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1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE WESTERN DISTRICT OF TEXAS

3 SAN ANTONIO DIVISION

4 HOLCOMBE, et al.,)

)

5 Plaintiffs,)

)

6 vs.) Civil Action No.

)

7 UNITED STATES OF AMERICA,) 5:18-CV-00555-XR

)

8 Defendant.) (Consolidated cases)

9
10
11 REMOTE ORAL VIDEOTAPED DEPOSITION

12 UNITED STATES OF AMERICA

13 BY ITS CORPORATE REPRESENTATIVE

14 JAMES KEVIN POORMAN

15 Thursday, July 9, 2020

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24 Reported by:

25 Rebecca Callow, RMR, CRR, RPR

1 appropriate points through the career path. Right?

2 A. Yes.

3 Q. So it's another way of saying these are the
4 minimum training requirements for various career
5 fields. Right?

6 A. Correct.

7 Q. Does the career field of a special agent
8 have a CFETP?

9 A. Yes.

10 Q. Okay. And I think you reviewed some of
11 those CFETPs. Right?

12 A. Yes.

13 Q. Okay. Let me show you one of them.

14 You should be seeing on your screen
15 USA 25379. Right?

16 A. Yes.

17 Q. Can you tell me what USA 25379 is?

18 A. Yes. That's the CFETP specific to the OSI,
19 the special investigations career field.

20 Q. So a special agent -- this would outline
21 the minimum training requirements for special
22 agents. Fair?

23 A. Yes.

24 Q. And when would this document be applicable
25 or effective?

1 A. You mean by date or do you mean effective
2 in terms of what it applies to?

3 Q. By date.

4 A. Oh, well, this was written in July of 2000.

5 Q. Okay. So would it be effective for
6 individuals taking their training after July of
7 2000?

8 A. Yes. Until superceded, it would be
9 effective.

10 Q. Do you know when this particular document,
11 USA 25379, was superseded?

12 A. I believe it was 2012.

13 Q. 2012.

14 Can you tell me -- I assume there have
15 been multiple changes in regulations between 2000 and
16 2012. Right?

17 A. No.

18 Q. There was no changes in AFOSI regulations
19 between 2000 and 2012?

20 A. Correct.

21 Q. Were there any changes in DoD regulations
22 that affected AFOSI between 2000 and 2012?

23 A. Yes.

24 Q. How does a three-year training and
25 education plan take into account those types of

1 important point, so let's scroll to Bates stamp
2 11727. I want to make sure that I understand your
3 testimony clearly.

4 In other words, the IG found a
5 compliance rate for the aggregate Air Force.
6 Correct?

7 A. Yes.

8 Q. And then, in response to this report, the
9 Air Force sort of disaggregated the compliance rates
10 and the Air Force identified its own compliance
11 rate. Is that fair?

12 A. Yes.

13 Q. And I believe, if you can read the last
14 sentence in Paragraph 2, which, I believe, speaks to
15 the percentages that you were just discussing.

16 A. Yes. Read it, you say?

17 Q. Please.

18 A. Yeah.

19 "Of the remaining 261, 16 fingerprints
20 and 17 final dispositions were not submitted to
21 IAFIS in accordance with DoDI 5505.11. However,
22 AFOSI correctly submitted 245 out of the 261
23 fingerprints, and 244 out of the 261 final
24 dispositions to IAFIS, which reflected a
25 93.86 percent success rate for fingerprints and a

1 93.48 percent success rate for final dispositions."

2 Q. And in adopting the IG recommendation to
3 submit the missing fingerprints and file
4 dispositions, OSI was referring to those 16
5 fingerprints and 17 final disposition reports. Is
6 that accurate?

7 A. Yes.

8 Q. And it's also accurate to say that that
9 effort would not have included Mr. Kelley's
10 information. Is that true?

11 A. Yes.

12 Q. When OSI adopted the recommendation to
13 submit the identified missing fingerprints and final
14 disposition forms, did it agree to submit every
15 outstanding fingerprint and final disposition form
16 since 1987?

17 A. No.

18 Q. Did OSI feel the need to conduct a
19 comprehensive review of all criminal history data of
20 all convicted individuals from 1997, given that they
21 had a roughly 94 percent compliance rate?

22 A. No.

23 Q. Did OSI undertake to perform a
24 comprehensive review of all criminal convictions
25 prior to what had happened post Kelley's shooting?

1 to comply with those requirements, they would have
2 taken and they would have been assessed to have met
3 those standards for each of the tasks in there in
4 order to be assessed to have been successful and
5 completing it and, thereby, worthy of getting their
6 badge and credentials, yes.

7 Q. And so looking at that career field
8 education and training plan, Bates stamp 25379.

9 (Pause in proceedings.)

10 BY MR. STERN:

11 Q. So this was the career field education and
12 training plan that was applicable from July 2000 to
13 2012?

14 A. Yes.

15 Q. So this is what OSI agents -- or, I guess,
16 before they were agents, when they were still in
17 training, this is one of the training plans that
18 they would have been trained on from 2000 to 2012.
19 Is that accurate?

20 A. Yes.

21 Q. So every OSI employee who became an OSI
22 agent between 2000 and 2012 would have been required
23 to be trained on the material in this lesson plan?

24 A. Yes.

25 Q. And they would have been required to be

1 certified on the competency on the lessons in this
2 plan. Correct?

3 A. Yes.

4 MR. JACOB: Bates stamp 25414.

5 (Pause in proceedings.)

6 BY MR. STERN:

7 Q. The training in this lesson plan includes
8 submitting criminal history data to NCIC-FBI.

9 Correct?

10 A. It does. I think it's the next page, but
11 it does.

12 Q. All right.

13 A. There it is. Yes.

14 Q. And so every OSI agent who graduated
15 between 2000 and 2012 would have been trained on
16 submitting criminal history data to NCIC-FBI. Is
17 that accurate?

18 A. Yes.

19 MR. JACOB: Objection. Form.

20 A. Yes.

21 BY MR. STERN:

22 Q. And, again, what does the 2B standard
23 represent?

24 A. I can't recall from memory. We would have
25 to go up to where those are defined.

1 Q. Is it a proficiency standard, sir?

2 A. Yes.

3 Q. So they would have then needed -- they
4 would have needed to graduate with a proficiency
5 level at the 2B ranking in order to get their
6 certification. Isn't that correct?

7 A. Yes. Well, 2B for the submitting part, 2C
8 for the fingerprint and photography portion. Yes.

9 Q. Thank you. Thank you, sir.

10 And so even if OSI does not retain
11 certificates maybe years after the fact, that doesn't
12 mean that OSI case agents were not trained as they
13 were required to on this core task. Isn't that
14 accurate?

15 A. Yes.

16 Q. And if an OSI member, who either
17 participated in or supervised the Kelley
18 investigation, stated in his deposition that he was
19 not trained on when to submit fingerprint cards or
20 final disposition forms to the FBI, would they be
21 misremembering their training?

22 MR. JACOB: Objection. Form. Calls
23 for speculation.

24 A. Yes.

25 \\\

1 That's a few hours of training in 17 weeks of
2 training.

3 So that's 50 -- 85 days, by rough
4 math, might be 85 days and three to four hours of
5 training. 85 days is -- it's easy to not -- with
6 everything else you're learning in the
7 shotgun-firehose approach that we do it, to come out
8 of there and not remember those three hours in those
9 85 days, especially over time. Especially as you
10 get out into the field and you've operated for a few
11 years, you can't -- you can't -- you won't recall,
12 you know, specific hours of training in a field
13 unit.

14 And then it will get, if you will, to
15 some extent, confabulated with what you've learned
16 after you graduated and went into field units. And
17 so you could very well not remember when you got
18 what you got. It's very possible. Yes.

19 Q. And I think you previously gave me the
20 total number of weeks, but how many weeks of
21 training was the BSIC and the CITP combined?

22 A. It's about 17 weeks.

23 Q. And can you speak more generally about the
24 discretionary decision of FLETC and OSI in deciding
25 the curriculums based on the various core tasks and

1 general functions of OSI?

2 A. Well, I can speak to, perhaps, how FLETC
3 training is developed and then how OSI is separately
4 developed, if that's what you're asking.

5 Q. Please.

6 A. Okay. So FLETC is -- again, that's a
7 course for all federal criminal investigators to go
8 through. So they call them partner agencies at
9 FLETC. So the partner agencies: OSI, NCIS, ATF, a
10 variety.

11 I think by the time you include all of
12 the IG shops that have 1811s, which is the civilian
13 criminal investigator series in the federal
14 government, get together.

15 They're the partner agencies. So
16 they're the ones that are asking for the training of
17 their people. So they get together and collectively
18 determine what is important for basic training of
19 criminal investigators.

20 And it's irrespective, if you will, of
21 the -- of the agency requirements. This is, in
22 general, homogenizing all that needs to get trained
23 to all these agencies; what are we going to teach
24 them.

25 So they will get together, very

1 similarly to what OSI and any instructional systems
2 design process, a training process would do, and
3 that's sit down and identify what's needed and then
4 figure out the things that are needed, the skills
5 are needed, at what level do they need to know it.

6 And then they will construct a
7 training plan, a CFETP-equivalent kind of a product
8 that says, okay, these are the skills and this is
9 what we have to train to to meet the requirements of
10 partner agencies that are going to employ these
11 people.

12 And then the instructors take over.
13 They take the guidance that they get with regard to
14 what they need to train, the level they train it at,
15 and they construct their training plans and their
16 lesson plans to get the students to the level that
17 they -- they're prescribed to get them to.

18 The same thing occurs in OSI. And we
19 see that in the CFETP, and then the lesson plans
20 would be developed in accordance with that.

21 The OSI portion is much more
22 OSI-specific. And as I said before, an example
23 would be, in CITP, because these are all federal
24 agencies who largely are dealing with civilian law
25 enforcement, the Title 18 portion of that.

1 But they get extensive training, which
2 is helpful to us later; we don't have to train.
3 They get over 40 hours on the 4th Amendment, for
4 example. So a tremendous amount of training given
5 to search, seizure and, certainly, embedded in that
6 is an extensive understanding of the probable cause
7 because that's needed to do most of those search and
8 seizure authorizations.

9 And then they'd come over to us and
10 we'd introduce them to the military justice system
11 and the Uniform Code of Military Justice penal
12 codes. And to borrow from the 4th Amendment, okay,
13 they taught you how to get a search authorization
14 under the federal system, we're going to teach you
15 the probable cause application to filling out an
16 affidavit and getting a search-seizure authorization
17 under the military, the Air Force OSI system, to
18 build upon the training that they had.

19 So between the two of these, it rounds
20 them out to their ability to perform, frankly, on
21 the federal side plus the military side to become a
22 criminal investigator for us.

23 Q. Thank you, sir.

24 And are desk officers at the region
25 level expected to have the same level of training as